

**“Is Anybody Listening?”**  
**Relocation, Sovereignty, Civil Rights, and Public Law 93-531<sup>1</sup>**

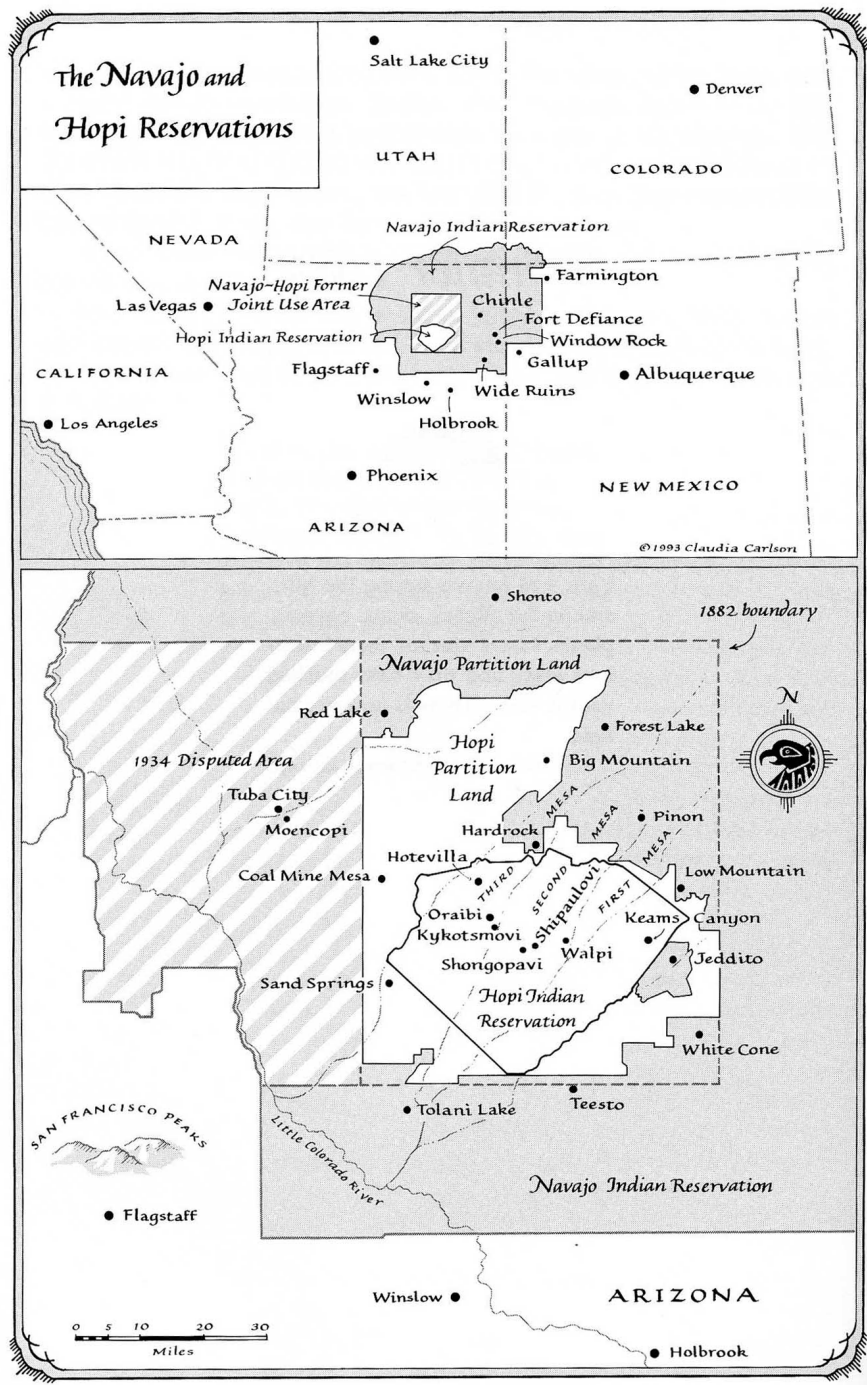
Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return. (*United Nations Declaration on the Rights of Indigenous Peoples*, 2007, Article 10)

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<sup>2</sup> This case has been significantly improved by the comments and suggestions of Jovana Brown, Loma Ishii, Ronald Maldonado, and Linda Moon Stumpff.



Source: Benedek, 1999, p. 2.

### **Abstract**

*By relocating 15,000 Navajos, did the Navajo-Hopi Land Settlement Act, Public Law 93-531, violate the civil rights of Navajos living on the Hopi Reservation in northeastern Arizona? This case examines the law's purpose, legal and historical antecedents, and alleged connections to mineral interests coveting the resources on Black Mesa. The case examines the lived experiences and cultures of the Navajos and Hopis affected by P.L. 93-531. It also examines the role the federal government, lawyers, and mineral interests played in precipitating the crisis. The case highlights those Navajos resisting the law. It examines their appeals to the U.S. judiciary for protection of their civil and religious freedoms, and why these appeals failed. The case is an example of how Western-based property law has undermined traditional Native American practices of collaboration and consensus.*

### **Introduction**

“Is anybody listening?” Roberta Blackgoat used to ask this question frequently. Often she wasn’t necessarily addressing those in the room with her. She was speaking to anyone who would listen and to the United States government. She felt if they sincerely listened to her concerns they would repeal Public Law 93-531, also known as the Navajo-Hopi Indian Land Settlement Act.

Passed by Congress on December 22, 1974, P.L. 93-531 called for approximately 15,000 Native Americans, in a remote section of northern Arizona, affecting two Indian tribes, to vacate homes and abandon land they and their ancestors had lived on and revered for generations. Roberta Blackgoat thought that if the U.S. government truly knew how P.L. 93-531 was traumatizing her and her neighbors, it would repeal it.<sup>3</sup> However, the law wasn’t repealed and this case examines why it wasn’t repealed and the fallout from its implementation.

Between December 1974, when the law was enacted, and July 1986—the deadline the law stipulated for relocating its indigenous inhabitants—12,000 Navajo and 100 Hopi had complied with the law and relocated (Benedek, 1999; Brugge, 1994; Cheyfitz, 2000; Feher-Elston, 1988). The law had partitioned the Hopi Reservation into two sections—one section for the Hopis, Hopi Partitioned Land (HPL), and one section for the Navajos, Navajo Partitioned Land (NPL).

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<sup>3</sup> During the 1980s and 1990s, the author witnessed the struggles of the Big Mountain Navajo against the federal law ordering their relocation. The author was studying the Navajo language at the University of Washington (Seattle) with Dr. Gary Witherspoon and at Navajo Community College (Tsaile, Arizona). The author was also facilitating a high school exchange program between The Bush School, in Seattle, and Rock Point Community School, Arizona. Beginning in 1987, and continuing until 2003, the author returned frequently to the Navajo and Hopi reservations. In 1996 he completed a graduate program in English, with a focus on Native American Literatures at Western Washington University. The biographical information for Roberta Blackgoat and her family come from the author’s Master’s thesis (Luckmann, 1996).

But Roberta Blackgoat and approximately 3,000 Navajo who lived on Hopi Partitioned Land continued to resist relocation long after the law's deadline. Blackgoat was one of the resistance leaders from Big Mountain, one of the most traditional places on the vast Navajo and Hopi reservations. Big Mountain was part of land that in 1882 President Chester Arthur, by executive order, had created as a reservation for the Hopi (see map). Nearly 100 years later, Public Law 93-531 was now calling for the removal of all Navajos, like Blackgoat, from Hopi Partitioned Land, even though many of their ancestors had been living there since before the creation of the Hopi Reservation. This is what Blackgoat and her neighbors were resisting.

Blackgoat was one of the few Navajo elders on HPL who was bilingual, which put her in the position of being a spokesperson for the others. In addition to her native language, *Dine bizaad* (Navajo), she spoke English, which she learned during the three years she spent at a boarding school in Phoenix when she was a teenager. Blackgoat was an effective leader. She had a sense of humor. She often said that the only one to relocate her would be the Creator.

Roberta Blackgoat was born in the month of October, in the year 1916, at *Dzil Ntsaai* (Big Mountain) on *Dzilijiin* (Black Mesa). She didn't know the exact day of her birth (i.e., she didn't have a birth certificate), but her parents told her she was born on the full moon. Since for her the new moon marks the beginning of a new month, and since the full moon is halfway through the lunar cycle, Blackgoat referred to October 15<sup>th</sup> as her birthday. "*Daatsi*" (maybe), she would say with a laugh.

According to Blackgoat, she is the sixth generation of her mother's clan, *Todachiini* (Bitter Water), to live at Big Mountain. If a new generation is figured every 30 years, Blackgoat's great-great-great grandmother was born at Big Mountain approximately 180 years ago, in the early part of the 19<sup>th</sup> century. One day when the author was with her, Blackgoat pointed to the other side of Moenkopi Wash—an arroyo that flows generally west, past the Hopi village of Moencopi, past the Navajo town of Tuba City, all the way to the Little Colorado River—"My mother and grandmothers are buried on that ridge we call *Tonalii*," she said, pointing in the traditional Navajo way with her lips.

The Bitter Water Clan was one of the first four clans created by *Asdzaa Nadleehe* (Changing Woman) in the Navajo Genesis story, *Dine bahane'*, when Changing Woman, the most revered deity in Navajo (*Dine*) mythology, rubbed dry skin from her body and created the first Dine, or people. Thus, Blackgoat also traces her lineage back to the time of creation. (Luckmann, 1996; Zolbrod, 1984)

Blackgoat typically dressed in velveteen skirts and blouses in vogue during the Long Walk era of the 1860s. This was typical dress for Navajo women over sixty. She liked to wear tennis shoes and often used a scarf to cover her salt and pepper colored hair, which was tied in a ponytail with white string in the traditional bun (*tsiyyeel*). Blackgoat said that she was a descendent of Mother Earth (*shima*), and to prove it, she would pick up a handful of soil, put it up next to her cheek, smile and say, "We have the same complexion."



Roberta Blackgoat

Source: Benally, 2011, p. 31.

Blackgoat's mother and grandmother died when she was six years old. Not long after these deaths, her two brothers died from the flu within 24 hours of each other. An aunt, also from Big Mountain, raised Blackgoat. When Blackgoat married, following Navajo custom, her husband moved to her family homestead at Thin Rock Mesa on Big Mountain. Her husband, however, was killed in an automobile accident in 1966. She raised their six children by herself, in a subsistence way, without running water or electricity, relying on her sheep for food and wool. Blackgoat sheared the sheep for their wool, carded it, dyed it using local plants, spun it, and finally wove it into beautiful rugs to trade for flour and lard and other staples at Hard Rock Trading Post, an hour's drive away in a pick-up truck over dirt-track roads. "I've had a rough life," she said, "but the worst has been this relocation law." Covering the walls of Blackgoat's food pantry, in her 2-room, 200-square-foot cinderblock house, were many posters and slogans relating to her struggle:

- Repeal Public Law 93-531
- Support Navajo-Hopi Unity
- Resist Partition of Navajo / Hopi Land
- No More Fences / Stop P.L. 93-531
- U.S. Out of Big Mountain
- Relocation is Genocide
- Relocate Senator Goldwater to Europe
- Honor Mother Earth
- Everything Is Sacred
- Respect Other People
- We Belong to the Earth / The Earth Does Not Belong to Us
- You're Only Beaten When You Stop Trying

Less than an hour's drive from Blackgoat's homestead (e.g., eight-sided hogan, sheep corral, and house), over dirt paths and washed-out tracks, was the homestead of another Navajo matriarch and leader of the resistance to P.L. 93-531, Mae Tso. Tso found herself in opposition to the law when lightning in 1977 destroyed her house and she was told she couldn't rebuild it because she lived on land that in 1974 Public Law 93-531 had partitioned to the Hopis. When she tried to rebuild her house it was torn down (Benedek 1999, p. 71). When she appealed to the Navajo Tribe for help, she was told, "a federal judge had issued a ban on new construction" (p. 70). But Tso was told she could "apply for relocation benefits authorized as part of the 1974 Act . . . . A modern house would be built for [her] by the newly formed Navajo and Hopi Indian Relocation Commission" (p. 70). For Tso, however, the thought of relocating was unthinkable. "Tso's family had lived in the same area for five generations" and it was in conflict with how she had been raised and lived all her life. Moreover, Tso saw what happened to her sister and brother-in-law who had relocated to Flagstaff:

[They] lost their house [] and had been reduced to begging for help. . . . [Tso was] convinced that relocation would ruin them. The whole idea made no sense and it conjured fears of a huge void, sadness, loneliness, and sheep hunger. Tso's friend

Pauline Whitesinger [who lived nearby and was another important matriarch on Big Mountain] puts it this way: ‘In our traditional tongue there is no word for relocation. To move away means to disappear and never be seen again.’ (Benedek, 1999, p. 73)

As Tso contemplated her choices in rebuilding her home [or relocating], she was teetering on the edge of a tangle of history in which she would become an outspoken participant. She and her family and hundreds of others would find out, in various ways, with varying degrees of accuracy, what that law created in 1974 really meant. Tso, a shy, intensely loyal and emotional woman, would become one of her people’s strongest spokespersons. It would cost her health and almost her marriage. But to Tso, the choice was clear. The land was hers and it held everything she knew. She would fight to the death. (Benedek, 1999, p. 69)

**What purpose did P.L. 93-531 serve, and why were Roberta Blackboat, Mae Tso, and 15,000 Navajos being relocated against their will?**

The purpose of the law was to solve a land dispute between the Navajos and Hopis dating back to the 19<sup>th</sup> century when the federal government created the Hopi and Navajo reservations. The competing Hopi and Navajo claims to the land were based on many reasons, which will be discussed as this case develops. In the eyes of the U.S. judicial system, the genesis of the Hopi claim to the land dates back to 1882 when U.S. President Arthur Chester issued an executive order setting aside 2.5 million acres around the Hopi villages on the three southern lobes of Black Mesa, and much of the rest of Black Mesa stretching north, for Hopis and “such other Indians as the Secretary of the Interior may see fit to settle thereon.” The primary Navajo claim to the land was that they occupied most of the 1882 Reservation, except for the Hopi villages on the three mesas, and had occupied the land since the 1882 Reservation was created for Hopi and “other Indians.”

After decades of legal wrangling, which also will be discussed later, Congress, at the urging of Arizona Senator Barry Goldwater, decided the best solution was to divide the 1882 Reservation into two sections: one section for the Hopi, Hopi Partitioned Land (HPL), and one section for the Navajo, Navajo Partitioned Land (NPL). In P.L. 93-531, the Hopi were losing 30% of their original reservation to the Navajo, but they were gaining 100 percent control over the rest of the land partitioned to them. One hundred Hopi were living on NPL, and they soon relocated. However, because of the large number of traditional Navajo required to relocate, 15,000, and at substantial economic, social, psychological, and spiritual costs, the issue garnered national and international attention. Roberta Blackgoat and Mae Tso were two prominent grandmothers who became famous advocating for the rights of the 1500 - 2,000 Navajo still occupying HPL in defiance of the law. They had turned to a political activism that was alien to them in a last attempt to save what was precious to them. Relocation meant that they would be unable to live the life that meant life itself to them.

Blackgoat and Tso were refusing to relocate, but many of the 12,000 Navajos who did voluntarily relocate were experiencing the effects of relocation in a myriad of harmful

ways, which became a human rights issue investigated by the United Nations.<sup>4</sup> Those who relocated left behind what they had planned to give to their children and grandchildren and great-grand children as their inheritance—not only land but also a way of life. For Blackgoat and Tso, and many Navajo like them, a \$50,000 relocation house in one of the border towns could never compensate for what they were losing (Thayer, 1982).

### **What were the historical antecedents to P.L. 93-531?**

#### Brief Hopi History

Archaeological sites throughout Hopi country affirm that people have been living there for at least 10,000 years. And the cultural remains from village sites dating 1500 to 1600 years ago indicate “a clear, uninterrupted, logical development culminating in the life, general technology, architecture, and agricultural and ceremonial practices to be seen on the three Hopi mesas today” (Brew, 1979, p. 514).

Because the Hopi speak a Uto-Aztecan language, which is the prominent indigenous language family in Mexico and Central America (Mesoamerica), and because they are agriculturalists, cultivating maize (corn) originating from that region, anthropologists postulate that the Hopi people reflect an expansion of Mesoamerican culture into what is now the American Southwest. Scholars also think the Hopi may be descendants of the Anasazi, known for their cliff dwellings at Mesa Verde, Chaco Canyon, Canyon de Chelly, and throughout the Four Corners region (Benedek, 1993, p. 48). Other indigenous people, similar to the Hopi, and thought to be descendants of the Anasazi, too, lived in architecturally similar dwellings along the Rio Grande River in New Mexico. All of these Native Americans are known collectively as Pueblo people.

Southwest archaeology tells one story about Hopi origins. Hopi oral histories tell another. In Hopi creation stories their geneses place them near Black Mesa when the first Hopi emerged from a subterranean underworld. The Hopi kiva symbolizes this interrelated and reciprocal relationship between the Hopi and the earth (Hieb, 1979, Fig. 3, p. 579). “The Hopis maintain a connection with the center of the earth, for they believe that they are the earth’s caretakers [...]” (Benedik, 1999, p. 45). In Hopi cosmology, if they contribute to the earth’s wellbeing, the earth is obligated to take care of the Hopi, primarily by

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<sup>4</sup> In his article “Geopolitics of the Navajo-Hopi ‘Land Dispute,’” John Redhouse (1985) described a special session of the United Nations Human Rights Subcommittee convened in Geneva, Switzerland, on August 31, 1981, to review charges that the United States had violated the human rights of the Big Mountain Navajo by ordering them from their homes and land. Redhouse summarized the U.S. position on why such harsh measures were needed: “[. . .] the federal government’s intervention into the internal affairs of the Navajo and Hopi peoples was necessary in order to resolve a longstanding land dispute between the two neighboring tribes” (para 2). However, the Big Mountain legal brief, according to Redhouse, “alleged that the U.S. government’s program of mass relocation of Navajo and Hopi people from the former Joint Use Area in northeastern Arizona is actually motivated by powerful outside interests coveting energy resources in the disputed territory” (para 2).



providing rain, essential to their agricultural way of life. Their geneses were a migration traversing subterranean and surface roads ultimately bringing them to three mesas near permanent springs where they settled.

The Hopi lived on their three mesas and utilized the surrounding land for at least a thousand years before the Spanish arrived (Brew, 1979). Beginning in 1540 the Spanish occupied the Hopi mesas, and the other pueblos along the Rio Grande River, until the Pueblo Revolt of 1680 forced the Spanish to leave. Though the Spaniards 12 years later were successful in re-conquering the pueblos along the Rio Grande, they were unable to subdue the Hopi, partially because, according to Brew, of their geographic isolation.

The Hopi remained isolated until the end of the Mexican War in 1848 when the Americans took the region from Mexico (Treaty of Guadalupe Hidalgo). Mexico, however, even after its successful revolution against the Spanish Crown, had never taken control of the Hopi region. After the Mexican War, Navajo raiders preyed upon the newly arrived American settlers. To control the Navajo attacks on the incoming American settlers, in 1863 the U.S. Army rounded up 8,000 Navajos and marched them to Fort Sumner (Bosque Redondo) in eastern New Mexico, where they were incarcerated until 1868. Two thousand Navajos died during The Long Walk (more about this later).

In the aftermath of the war with Mexico, the U.S. commissioned different Indian agents to the region, and the first government buildings at Hopi, at Keams Canyon, were established in 1874. It was during this time that the Mormons established a trading post at Tuba City and a mission at the Hopi village of Moencopi. Dockstader asserted that the Mormons helped protect the Hopis from Navajo raiding but that the Mormons began a slow takeover of Hopi land (1979, p. 526). A century later the Mormon influence on the Hopi was still strong, as will be discussed later as well. However,

with increasing hostility manifested toward Mormon occupancy of the Southwest, federal authorities felt it was necessary to head off their further expansion; one avenue was by way of the establishment of controlled lands. Accordingly, on December 16, 1882, President Arthur signed an executive order establishing a formal reservation bounded by rectangular limits. A section of approximately 55 miles by 70 miles was set aside for the use of ‘Hopis and other Indians.’ (Dockstader, 1979, p. 526)

During the late 19<sup>th</sup> century, as the U.S. took greater control over the region, it precipitated internal strife on the Hopi mesas. Dockstader (1979) wrote that some Hopis were hostile toward the Americans, but that other Hopis were labeled as “friendlies” to the U.S. government. This division will be important a century later, too, in the Hopi response to P.L. 93-531. “The [Hopi] tribal council was established in 1935 after an election in which a minority of Hopis voted . . . . The overwhelming majority of eligible Hopi adults had registered their disapproval by just staying away from the polls. The perpetuation of political factions was reflected in the council then, as it was in the 1970s [when Congress passed P.L. 93-531]” (Dockstader, 1979, p. 531).

Lastly, after The Long Walk, and increasingly into the mid-20<sup>th</sup> century, Navajos were settling closer and closer to the Hopi villages located on the three mesas at the southern end of Black Mesa. Because of the Navajo population superiority—they are the largest Indian tribe north of Mexico—the Navajo sheep herds were causing problems, so much so that a specific grazing area on the Hopi Reservation, District 6, was restricted solely for Hopi use. Navajos occupied most of the rest of the land outside of District 6.

#### Brief Navajo history

Navajo geneses, similar in scope to the Hopi, have them traversing subterranean roads until emergence onto the earth's surface, in New Mexico, near the Four Corners area of Arizona, Utah, Colorado, and New Mexico, between the four sacred mountains, where they have lived continuously to this day, except for the period known as The Long Walk (1864-68). First Man and First Woman, supernatural beings, created Changing Woman, also a supernatural, formed the Dine, or Navajo, from her skin. Roberta Blackgoat, and other Navajo resistors to P.L. 93-531, often invoked these mythological origins when discussing their spiritual and material relationships to the land.

Anthropologists, however, assert that the Navajo are Athapaskan-speaking people originally from western Canada who arrived in the Upper San Juan River Valley, near present day Farmington, New Mexico, in the Four Corners area, from 1000 – 1525 AD (Bailey & Bailey, 1986; Brugge, 1983; Plog, 1979; Witherspoon, 1988). They arrived during, or shortly after, the Anasazi period (1 – 1300 AD). The program manager for Navajo Nation Historic Preservation wrote recently that “Although archaeologists have the Navajo arriving in the Four Corner area in the 1100 to 1400 range, Navajo oral tradition places them in the area much earlier [...]” (R. Maldonado, e-mail communication, March 5, 2012).

Even though the Spanish initially subdued the Pueblo people in the 1600s and established Catholic Missions among them, not so among the Navajo. In fact, Navajo relations with the Spanish were hostile—the Navajo frequently raided the Spanish for horses and livestock. The Spanish re-conquest of the Pueblos along the Rio Grande River Valley, following the Pueblo Revolt of 1680, forced thousands of Pueblo people to flee towards northwest New Mexico and seek refuge in Navajo Country (Dinetah). The Navajo accepted the Pueblo refugees and integrated them into their settlements and way of life; moreover, this synthesis of Anasazi-Puebloan culture with Navajo culture created an expansion of Navajo culture and a new Navajo identity distinguishable from other Athapaskans (Bailey & Bailey, 1986).

The refugees brought with them many skills, which the Navajo acquired and made famous, such as weaving, but the refugee's knowledge of animal husbandry transformed the Navajo economy and settlement patterns. The Navajo, who had been primarily hunters and gatherers, became hard-working and industrious pastoralists, relying more and more on sheep and goats for their subsistence and economic welfare. As their lifestyle changed so did their settlement patterns—the Navajo expanded south and westward from the San Juan River Valley to the Chinle Valley, Canyon de Chelly, the Little Colorado River Watershed, and Black Mesa—the Hopi lived primarily on three mesas at its southern end (Bailey & Bailey, 1986).

The Navajo did not rely solely on natural reproduction to increase their herds; they also raided Spanish settlements, and later the Mexicans and Americans, for livestock. Bailey and Bailey estimated that between 1846 – 1850 “Navajos and Apaches took an estimated 450,000 sheep” (1986, p. 18). This raiding lifestyle to increase their herds precipitated the Navajo War of 1863-4 with the Americans. As noted above, the Navajos were defeated, 8,000 of them were rounded up, approximately 80 percent of their population, and marched to Fort Sumner (Bosque Redondo) in northeastern New Mexico, where they were imprisoned from 1864-68.

According to Bailey & Bailey (1986), the U.S. was spending one million dollars every year on the Navajo internment and couldn’t fiscally afford incarcerating the Navajo while the American economy was still recovering from the Civil War (1861-5). The Navajo, however, believe the U.S. government allowed them to return to *Dinetah* because of their ceremonies, which affirm the power of positive thinking—mind over matter (Witherspoon, 1988). No doubt many reasons persuaded the U.S. government to release the Navajo. On June 1, 1868 the Navajo and Americans signed a treaty allowing the Navajo to return to their homes. The U.S. created a 3.5 million acre reservation for them in the northwest corner of New Mexico and the northeast corner of Arizona, “a small fraction of their former domain,” which had included Black Mesa and the valley of the Little Colorado River (Bailey & Bailey, 1986, p. 26).

To encourage peace and prosperity, and to prevent a return to raiding, the U.S. helped rebuild the Navajo economy by providing sheep and goats, agricultural supplies, and food until 1878 (Bailey & Bailey, 1986, p. 27). According to Bailey & Bailey, 1986; Roessel, 1983; and Witherspoon, 1988; among others, in the decades following The Long Walk, the Navajo experienced phenomenal economic growth, “unique in the history of Anglo-American and Indian relations” (Bailey & Bailey, 1986, p. 27). In a period of 40 years the Navajo rebuilt their herds from zero to nearly 2,000,000 head of sheep and goats (pp. 41-2). Initially following The Long Walk some Navajo returned to raiding to increase their herds, but after 1872 the Navajo relied on natural reproduction and trade.

A ratio of between 1:40 and 1:50 (humans:sheep) is necessary for subsistence (Bailey & Bailey, 1986, p. 20), but by the 1880s the Navajos had rebuilt their herds to ratios of between 1:70 and 1:95 and were able to trade livestock for Hopi corn, bread, and peaches. In 1893, the Navajo traded 5,000 sheep for 5,000 pounds of Hopi corn (Bailey & Bailey, 1986, p. 95).

As their sheep herds expanded exponentially, so did the Navajo population. A lot of land was needed for grazing their sheep. The Navajo, who lived in mobile, extended family settlements, had spread far beyond their 1868 reservation. The U.S. government recognized this and quickly expanded the Navajo Reservation land base by executive order: in 1878, 1880, and again in 1882 creating the Hopi Reservation (for the Hopi and other Indians, presumably the Navajo). By 1966, the U.S. government had expanded the Navajo land base more than a dozen times by executive orders (Roessel, 1983, p. 520).

Contrary to what was happening in the rest of the United States after Congress passed the Dawes (Allotment) Act of 1887, which took Indian land (approximately 60%), the Navajo Reservation never experienced allotment but kept expanding. According to Bailey and Bailey, to avoid conflict between Navajos and American settlers (and Mormons from Utah), the government kept control of the land and protected the land base by executive orders expanding the Navajo Reservation (1986, p. 89).

### **Corporate development of energy resources on Black Mesa**

The Navajo and Hopi reservations are rich with nonrenewable energy resources: coal, oil, gas, and uranium (Aberle, 1979; Bailey & Bailey, 1986; Clemmer, 1979). Coal deposits were noticed on Black Mesa long before the 20<sup>th</sup> century (Brew, 1979, p. 517). Oil was discovered in the 1920s and discoveries of natural gas and uranium followed not long thereafter. Because of remoteness and a lack of a good regional transportation system, the resources weren't generally mined until after WWII when a nation-wide economic boom increased the demand for them (Bailey & Bailey, 1986, p. 236).

The desire of energy corporations to extract these resources led to the creation of the first tribal councils,<sup>5</sup> which were constituted initially by the Bureau of Indian Affairs (BIA) to sign leases with the energy companies (Aberle, 1979, p. 647). The Navajo tribal council signed their first lease in 1923 and the Hopi tribal council in 1935, both for oil exploration. Royalties from oil revenues were initially important to the tribes, especially in the 1960s, but coal became increasingly important in the 1970s (Aberle, 1979, p. 649). The Navajo tribal budget became increasingly more dependent on energy resources (Aberle, 1979, p. 650), which was, as well, true of the Hopi tribal budget (Clemmer, 1979, p. 535). The following speaks to the Navajo experience but was true of the Hopi as well:

The biggest business in the Navajo country is the extraction of energy resources, but all this extraction is in the hands of major U.S. corporations, operated under leases negotiated with the Navajo Tribe and approved by the Secretary of the Interior. (Aberle, 1979, p. 651)

Black Mesa has some of the largest, high-quality coal reserves in the world, four billion tons; they are shallow, subsurface coal deposits extracted relatively easily and cheaply by strip-mining (Aberle, 1983; Benedek, 1999; Kammer, 1980). In 1966 Peabody Coal Company secured its first strip-mining leases on portions of Black Mesa to extract coal to generate electricity at the Mohave, Page, and Four Corners power plants (Aberle, 1983, p.650; Bailey & Bailey, 1986, p. 237). The Mohave generating station produced electricity for Los Angeles, Las Vegas, and Phoenix. It burned coal that had been strip-mined, pulverized and slurried 273 miles through a pipeline from Black Mesa to the

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<sup>5</sup> The terms *tribe* and *tribal* are **not** used to refer to the Navajo or Hopi people; tribe and tribal are used to refer to the tribal governments, including both the tribal councils and their administrative organizations.

generating station near Bullhead City, Nevada. The generating station has now been closed for several years.

The slurry depended on large quantities of water, 1.3 gallons of groundwater a year, pristine water that is “between 10,000 and 35,000 years old” (Glennon, 2002, p. 157). A 1997 United States Geologic Society (USGS) study found that “pumping by Peabody *alone* exceed[ed] the natural [aquifer] recharge” (p. 161). In this desert environment, both Hopi and Navajo relied on springs and wells for their agricultural crops and livestock herds. According to Vernon Masayesva, former tribal chair of the Hopi, “90 percent of the springs on the Hopi reservation have dried up since he was young. He blames groundwater pumping by Peabody” (qtd in Glennon 2002, p. 158). Masayesva created a nonprofit organization, Black Mesa Trust, to fight the use of groundwater for the slurry pipeline.

The linkage between P.L. 93-531, the relocation of indigenous people, and the strip-mining of Black Mesa coal has been written about extensively (Benedek, 1992; Kammer 2000; Nies, 1998; Redhouse, 1985). The authors examined whether indigenous people and their mineral and water resources were being sacrificed to meet the booming energy needs of the Southwest, and for corporate profit. Aberle asserted that few Navajo are willing “to give up all dependency on livestock or to abandon their place in Navajo country” (1983, p. 657). Aberle further explained that there was nowhere for the relocated Navajos to resettle and practice their traditional lifestyle because “all utilizable land is already claimed by some family” (p. 657). In addition, because the Navajo Nation was developing a modern economy with “capital-intensive, complex technology for the extraction of resources,” it would enrich large-scale corporations, such as Peabody Coal, but leave those Navajo practicing a “pre-industrial subsistence technology” [like those at Big Mountain] in poverty (p. 657).

### **Tribal councils versus core indigenous institutions of the Navajo and Hopi**

Because the tribal councils were created in the 1920s and 1930s to help the BIA manage tribal affairs (e.g., sign leases with energy companies) “rather than serve the Indian people,” until recently the BIA and tribal councils had little legitimacy among individual Navajos and Hopis (Bailey & Bailey, 1986, p. 237; Dockstader, 1979, p. 531). Moreover, the tribal councils were not the traditional Navajo or Hopi way of governing themselves but an extension of U.S. federal-Indian policy. For example, Bailey & Bailey wrote “The true core institution in Navajo culture was the resident extended family, a self-contained, self-sufficient, multigenerational unit that transmitted culture from the oldest and most conservative members to the children” (1986, p. 293). Moreover, Bailey & Bailey asserted, “If the extended family vanishes as an institution, continuity in Navajo culture change will vanish with it” (1986, p. 297). As the reader will see, forced relocation of thousands of traditional Navajos threatened their core institution—the multigenerational extended family.

The Hopis, on the other hand, were organized politically, socially, and religiously at the village level, into thirteen autonomous self-governing village units.<sup>6</sup> The Hopi tribal council was established in 1935 by the BIA, disbanded in 1940 from a lack of participation, and then reconstituted in 1951 to sign energy leases (Clemmer, 1979, p. 535). Council supporters among the Hopi were labeled as “progressives,” or “friendlies.” They accepted U.S. government influence in order to develop their economic resources. Opponents to the Hopi tribal council were labeled as “traditionalists,” or “hostiles”; they opposed the U.S. interference on their land, stressing that they were a sovereign, independent nation that never signed a treaty with the United States (Clemmer, 1979, p. 535; Dockstader, p. 526).<sup>7</sup>

This division within Hopi politics is important for many reasons relating to P.L. 93-531. The “friendlies” constituted the tribal council, which, according to Clemmer, “promoted economic exploitation of land and its resources” (Clemmer, 1979, p. 535). In 1961-64 the Hopi tribal council secured leases for oil, gas, and minerals worth \$3,000,000 and paid their lawyer John C. Boyden, who was appointed by the BIA, \$1,000,000. In 1966 the Hopi tribal council leased portions of Black Mesa to Peabody Coal Company and leased groundwater under Black Mesa for the slurry pipeline (p. 535). In the 1970s the Hopi tribal council was in support of the relocation efforts, too. However, in 1971 Hopi “hostiles”—village chiefs and ceremonial leaders representing 10 of the 13 villages—filed a lawsuit against the Secretary of the Interior and Peabody Coal Company opposing the strip-mining and the pumping of the aquifer (Clemmer, 1979, p. 536). “In the Hopi’s eyes, the Hopi did not own the land or minerals—no one did—and therefore they could not lease them to someone else” (Wilkinson, 1996, p. 456). The “hostiles” also opposed relocating Navajos or Hopis from the land.

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<sup>6</sup> According to John Connelly (1979), in “Hopi Social Organization,” “The concept of tribe when applied to Hopi is misleading, for the Hopi ‘do not form a tribe in the ordinary sense of the word’” (p. 539).

<sup>7</sup> The labeling of Hopis as “traditionalists” or “progressives” reflects a political opposition within Hopi society and not a cultural one. The split involves those in favor of the Hopi tribal council, and its work with the federal bureaucracy, and those not in favor of the Hopi tribal council. In the Hopi language, according to anthropologist Peter M. Whitely, progressives are “*pahannaanawaknaqam* (‘those wanting the white man’s ways’)” and traditionalists are “*qapahannaanawaknaqam* (‘those not wanting the white man’s ways’)” (1988, p. 230). There is a naïve assumption, however, that “traditionalists” are the only ones oriented toward Hopi traditions. This is false and a stereotypical image. Hopi who are characterized as “progressives” and “who have worked actively with the tribal council are at the same time holders of high offices in the religious societies” (Whitely, 1988, pp. 233-4). Therefore, I prefer to use the words “friendlies” or “hostiles” in regards to their political orientation toward the Hopi tribal council. “The reality is that most people are not involved politically much at all” (p. 234).

Clemmer noted, however, that both Hopi “friendlies” and “hostiles” were emphasizing Hopi sovereignty over Hopi land—just in different ways. The “friendlies” on the tribal council wanted to incorporate modern, “non-Indian use patterns” for economic development and benefit whereas the “hostiles” wanted to maintain Hopi land as “the Great Spirit ordained” (1979, p. 538), including allowing Navajos like Roberta Blackgoat and Mae Tso to stay on the land.

### **The land is sacred**

Navajo religion and worldview for Roberta Blackgoat, Mae Tso, and other Navajos at Black Mountain on HPL is site specific. In their essay, “Natural Law and Navajo Religion / Way of Life,” Roman Bitsuie and Kenja Hassan wrote:

This land within the four sacred mountains is their Jerusalem . . . . Their teachings dictate that they must live on this land and care for it, as well as for the plants and animals that were bestowed upon them as gifts from the Creator and holy beings. (2011, p. 91) . . . For those who are resisting relocation, leaving the place designated as their home by the Creator would also mean that they could not fulfill their duties as caretakers of the land and of their mother earth. (p. 93) . . . The land is the center of their orientation in experience and the base of their sense of reality and identity. To separate them from it would cause them to lose contact with all that is sacred and holy to them. (Bitsuie & Hassan, 2011, p. 94)

Mae Tso affirms this idea. She said, “We have become this land of ours. Why lay my beliefs down and compromise them? . . . It is not a good way to live. People should not live like this. I have my own prayers and songs. Why should I give this up and walk away?” (Tso, 2011, p.23) Roberta Blackgoat was quoted by the San Francisco Chronicle as saying something similar: “If you sign the settlement agreement, they will give you money. But what is a pocket full of money when you are torn from your sacred ways (Blackgoat, 2011, p. 32). The Navajo families resisting relocation and P.L. 93-531 “have always maintained that moving away from their land would prevent them from practicing their traditional religion and eventually lead to the dissolution of their culture” (Bitsuie and Hassan, 2011, p. 89).

The Hopis believe that they were created to keep and protect the earth for all people (Benedek, 1999, p. 173). Arlette Frigout wrote that “all Hopi life” is centered on “obtain[ing] rain, good harvests, good health, and peace” through a ceremonial life based on praying to the supernatural powers imbedded within the natural world (1979, p. 564). Land is not owned, but held in trust for use only (Stanislawski, 1979, p. 594). The Hopis would travel as far as 200 miles from their three mesas on Black Mesa to collect the plants and animals essential for the seasonal ceremonies that insured Hopi horticulture work would flourish. Stanislawski wrote that Hopi life revolved around these ceremonies that promoted their agricultural way of life, but that they were also stewards of the land that provided the essential raw materials (e.g., medicinal plants, eagles, snakes) for their ceremonies. The word Hopi means peace, and for Hopis like Thomas Banyacya, spokesperson and religious leader, the best way, whether Navajo or Hopi, is living in balance and harmony with the land. He cites climate change as an example of living out-

of-balance (Mudd, *Broken Rainbow*, 2006). “The whole of Black Mesa is a spiritual place. It is filled with villages, shrines, and burial grounds from the distant past” (Wilkinson, 1996, p. 455 ).

The Navajo and Hopi view of the land as sacred, as nurturing and sustaining of all peoples, belies the oppositional view of a Navajo-Hopi Land Dispute. So why couldn't Navajos and Hopis live together on the same sacred land?

### **An energy conspiracy theory**

How much does money sway behavior? Was coal, and other mineral development, the root cause of litigation to expel the Navajos from Big Mountain? According to Benedek, 1999; Brugge, 1994; Kammer, 1980; and Redhouse, 1985; among others too numerous to cite, mineral resource development companies, such as Peabody Coal Company, interacting with the political power structure played an important role in the legal action to relocate the Navajos.

With the discovery of rich mineral deposits underlying most of Black Mesa and within the boundaries of the 1882 Hopi Reservation, those supportive of the tribal council—many of them converts to Mormonism (Wilkinson, 1996, p. 462), and representing pro-development forces—captured the newly formed tribal council with the support of pro-development legal counsel appointed by the BIA in the person of John C. Boyden, a Salt Lake City lawyer and also a Mormon. According to legal scholar Charles F. Wilkinson, Boyden knew that he potentially could reap lucrative fees if he exploited “the potential that lay underground” (1996, p. 461); primarily he was referring to the immense coal deposits, which if developed were to be strip-mined. And Peabody Coal company, which Boyden's law firm also represented, would do the mining (Wilkinson, 1996, p. 469).

But there was a barrier. Thousands of Navajos were living on land that Boyden wanted to exploit, for himself and for Hopi economic development. The Hopi tribal council had been initially created in order to give one voice to the 13 autonomous villages, which traditionally had made their own decisions. The Hopi tribal council was created by the BIA and approved by the Secretary of the Interior following the 1934 Indian Reorganization Act (IRA), not only to overcome the impediments of Hopi village autonomy but also to sign leases with Peabody Coal and other energy companies for mineral resource development. The Council disbanded in the 1940s from lack of participation, but was re-constituted in 1951 under the leadership of John Boyden and aligned with Hopi “friendlies.” Even though village religious leaders refused to certify the council members, as required by the Hopi Constitution, the Interior Department still approved it (Wilkinson, 1996, p. 462). Soon after being appointed Hopi legal counsel—not by Hopi election but by the Bureau of Indian Affairs—and with the Hopi tribal council comprised of “friendlies” closely aligned with him, Boyden initiated a series of legal actions that led to P.L. 93-531 and eventually the relocation of thousands of Navajos against their will from the Hopi Reservation, created by executive order in 1882 for the “Moqui [Hopi] and other Indians.” (Benedek, 1999, pp. 138-42; Brugge, 1994, pp. 249-51; Cheyfitz, 2000, p. 261; Kammer, 1980, pp. 77-79, 85-90, 133-137)



The first action brought by Boyden was to determine who had surface and sub-surface mineral rights to the 1882 reservation land. Was it the Hopis, who lived primarily on their three mesas, and used the rest of their 1882 reservation land for hunting, gathering, and ceremonial purposes, or the Navajos who occupied the land year-round? Boyden appealed to Congress to help settle these issues, because, as Brugge wrote, “Development of mineral wealth required a legal determination that only Congress, or actions authorized by Congress, could provide” (1994, p. 250). In 1958 Congress passed Public Law 85-547 allowing the tribes to sue each other in order to resolve these questions concerning ownership of the 1882 Executive Order Reservation.

Boyden and the Hopi tribal council quickly sued the Navajo Tribe; the case became known as *Healing v. Jones*. In 1962 three federal judges ruled that 1.8 million acres of the original 2.5 million acre 1882 Reservation should be owned jointly, “joint, undivided and equal rights and interests,” by both the Hopi and Navajo tribes. This 1.8 million acre area of the 1882 reservation became known as the Joint Use Area (JUA) for Hopi and Navajo. On the Appendix Map this is section 18 and section 18b. Section 18a had been set aside for exclusive Hopi use. Sections 18, 18a and 18b are the boundaries of the original 1882 Hopi Reservation.

However, there was still disagreement on how the two tribes would settle the issue of the subsurface mineral rights. Boyden and the Hopi tribal council wanted the Navajos off one-half the JUA before coal and other mineral extraction proceeded. Congressmen from Utah, Arizona, and New Mexico wanted this issue resolved, too. Politically they were aligned with the energy companies as well as unhappy with the Navajo chairman Peter MacDonald. Influential Senator Barry Goldwater had a strained relationship with the Navajo and MacDonald in particular (Benedek, 1999, p. 200; Kammer, 1980, p. 114). In addition, the energy companies preferred to work with Boyden and the Hopi Tribe. “The energy companies’ interest in the area set the machinery of the partition in gear” (Benedek, 1999, p. 138). With Arizona’s Republican Senator Barry Goldwater advocating for partition of the JUA and relocation of its indigenous inhabitants, in 1974 Congress passed P.L. 93-531, which was based on *Healing v. Jones*’s concept of joint and equal ownership, ordering a 50-50 division of land “to provide for final settlement.”

At play were potential conflicts of interests between the politicians, Peabody Coal, and John Boyden. For example, after the bill’s passage, Utah Congressman Wayne Owens—the author of the bill in the House of Representatives—went to work for Boyden’s law firm (Benedek, 1999, p. 140; Kammer, 1980, p. 166). In addition, there was blatant racism. Sam Steiger, Republican Congressman from northeastern Arizona, said the issue would be different if we were trying to relocate whites, but these were just Indians (qtd in Kammer, 1980, p. 109). Moreover, in 1974, Congress was absorbed in the Watergate Hearings and few Congressional representatives took an interest; they were willing to trust their colleagues from the Southwest: Goldwater, Owens and Steiger. (On the Appendix Map, 18b became Hopi partitioned land and all Navajos had to move from it by 1986.)

### **The Relocation Commission: “A cultural disaster”**

In P.L. 93-531, Congress authorized the creation of a new federal agency, the Navajo and Hopi Indian Relocation Commission. The Commission was comprised of three politically appointed commissioners. Those relocating voluntarily would receive new homes somewhere else, typically in the border towns surrounding the reservations, such as Gallup, N.M.; and Flagstaff and Winslow, Arizona; and other benefits.

In *A History of the Navajo-Hopi Land Dispute*, Emily Benedek asserted that in 1974 it was thought that 800 families would have to be relocated, but by the July 1986 relocation deadline “the number had more than tripled.” In addition, the initial relocation cost estimates of \$41,000,000 had jumped 824 percent (1999, p. 174). Furthermore, according to anthropologist Thayer Scudder, an expert on the relocation of rural populations,

They learn, to their humiliation, that they are unable to protect their most fundamental interests . . . [including] the preservation of their land (both for themselves and, of great importance, for their children), their homes, their system of livestock management and its associated lifestyle, and their links with the environment they were born to. (qtd in Benedek, 1999, pp. 174-5)

Scudder went on to say that many of the relocatees would become dependent on the government agency that moved them (i.e., Navajo and Hopi Indian Relocation Commission), and that with the disruption of family and lifestyle it would lead to an increase in “depression, violence, illness, and substance abuse” (Benedek, 1999, p. 175). In an interview with the journalist Jerry Kammer, Scudder said “I have been dealing with compulsory relocation for twenty years, and it’s about the rottenest thing you can do to people, especially low-income people who are relatively illiterate and relatively immobile and tied to the land. . . . It’s a cultural disaster” (qtd in Kammer, 1980, p. 182).

In the psyches of the Navajos, relocation conjured up traumas from The Long Walk of the 1860s and stock reduction policies during the 1930s. Journalist Catherine Feher-Eston revealed “‘Relocation’ was the word Americans used during the forced marches to Bosque Redondo [Fort Sumner]” (1988, p. 94). Feher-Elston noted that during the 1930s the BIA felt that the land was badly over-grazed by Navajo sheep and slaughtered thousands, frequently “on the spot, before the horrified eyes of families who had raised them from birth” (p. 95). In the aftermath of P.L. 93-531, further complicating the commissioners’ relocation efforts was that the BIA implemented another round of stock reductions and put a construction freeze on any home improvements in the JUA. These tactics frightened the Navajo, tied as they were to previous historic traumas inflicted upon them by the U.S. government.

The ineptitude of the commissioners was also beyond reasoning. The process of applying and qualifying for benefits was long and tedious, similar to the recent aftermath of Hurricane Katrina in New Orleans. By the July 1986 relocation deadline thousands of Navajo families living on HPL had applied for relocation benefits but were still waiting for relocation houses and the other benefits promised them under the law (Feher-Elston, 1988, p. 93). These relocatees were living in bad circumstances. Journalist Emily Benedek

pointed out that relocatees were living in shacks in Tuba City and on condemned land, former uranium processing plants (1999, p. 326). Benedek also uncovered that as the deadline approached the Relocation Commission focused on relocating the remaining families without worrying about how the previously relocated families were fairing (1999, p. 327). On April 10, 1986, the Navajo Tribal Chairman who had succeeded Peter MacDonald, Peterson Zah, wrote a letter to the BIA, which said, in part:

I cannot comprehend the anxiety and frustration faced by the Navajo relocatees, individuals who have been without a homeland since the date of partition of the Joint Use Area. By their own words, they presently live under “duress and fear” . . . The Navajo Nation strongly objects to the shameful treatment of these individuals. (qtd in Benedek, 1999, p. 322)

From 1974 to 1986, those relocatees who did receive houses and benefits often lost everything within a few years. Not accustomed to living in cities, many of the Navajo relocatees lost their relocation houses because they didn’t or couldn’t afford to pay utility bills and taxes, and didn’t know how to live in an urban environment. According to Benedek, “By 1985, more than one third of the Navajos who had received relocation houses had already sold them or lost them, and another thirty percent had seriously encumbered their homes” (1999, p. 176). Those who had money often used it on alcohol to assuage their deep sense of loss and bitterness. Others spent and gave money away in other ways. Benedek asserted that twenty-five percent of the elderly were dead within a couple years; in addition, illiteracy and poor or non-existent English-speaking skills were huge barriers to their successful relocation. Anthropologist Gary Witherspoon wrote that in the Navajo worldview “A failure to achieve harmony and prolonged experience of unresolved conflict often leads to trouble, misfortune, illness, or death” (1981, p. 31).

### **Big Mountain Legal Defense/Offense Committee (BMLDOC)**

In 1982 two white lawyers, Lew Gurwitz and Lee Phillips, along with Larry Anderson (Navajo), a leader in the American Indian Movement (AIM), formed the BMLDOC. They wanted to create a grass roots organization to publicize the complex and confusing relocation plan. In doing so they hoped to repeal P.L. 93-531. Navajos still living on HPL, as well as the Navajo Tribe and traditional Hopi elders, supported repeal of the law (Benedek, 1999). The BMLDOC took Big Mountain elders like Roberta Blackgoat and Mae Tso across the country and to Europe to raise awareness. At public event after event the BMLDOC encouraged people to support the Big Mountain resisters by donating money and writing their congressmen. In addition, the BMLDOC launched a direct mail publicity campaign that garnered support worldwide. BMLDOC set up a one-room office in Flagstaff. Money flowed in, as did scores of hippies with longhair and young, idealistic “environmentalists” who volunteered at the Flagstaff office. Some of these volunteers journeyed out to Big Mountain to support the resisters by doing chores, such as herding sheep, gathering firewood, and hauling water. By 1986 the support network had exploded. A Berkeley-based inter-faith group began a quarterly newsletter with a circulation of over 50,000 subscribers. The one-room office had expanded to nine rooms with dozens of volunteers (Benedek, 1999, p. 283).

Violence out on the land escalated, too. Some of these white supporters joined elders or acted alone in tearing down sections of the partition fence dividing the 1882 Reservation into HPL and NPL. Occasional violence erupted throughout the disputed land. “At some point . . . we are going to resist any further attempt by Washington to take away our only source of support [the land]” (Miller Nez, qtd in Kammer, 1980, p. 159). With the help of Larry Anderson, AIM become involved, and in the spirit of their occupation of Wounded Knee in 1973, they set up a Survival Camp at Big Mountain. “The AIM security guards are strict, quasimilitary in appearance, and intimidating” (Benedek, 1999, p. 384).

Lee Phillips began preparing a class action legal suit on behalf of the Big Mountain resisters, arguing that P.L. 93-531 violated the Navajos first amendment rights to practice their religion. In 1988 Phillips filed his suit and it became known as *Manybeads et al. v. the United States*. The Navajo tribal council was in favor of repealing the relocation law, but, as Benedek (1999) explained, they were not in favor of a class-action suit by individuals; in federal-Indian law, “property rights trumped Indian religious rights” (Cheyfitz, 2003, p. 238). Moreover, the Navajo Tribe was invested in their own sovereignty issues regarding the JUA; the U.S. government has a trustee relationship with each recognized tribe — “Their relationship to the United States resembles that of a ward of his guardian”<sup>8</sup> — and the Navajo Tribe wanted to keep this relationship positive and beneficial.

As time went on the Navajo Tribe became more and more at odds with the BMLDOC. This had the unfortunate result of eroding tribal support and re-enforced feelings of helplessness among the resisters and relocatees. The Navajo Tribe was concerned that the violence was detrimental to their cause—repeal of the law or a land exchange, known as the Udall-McCain Bill, where the Hopis would receive land elsewhere to compensate for Navajos remaining on HPL. (The land exchange options came to nothing for various reasons, the most outlandish being white protests against giving the Hopi additional land in the national forests near the Grand Canyon.) But the violence at Big Mountain was the sore spot for the Navajo Tribe. According to Eric Eberhard, director of the Navajo Nation office in Washington, D.C., “The assumption in Congress is that [the BMLDOC] is actively and purposely provoking violence . . . and [Congress] will not respond sympathetically to that” (qtd in Benedek, 1999, p. 378).

### ***Manybeads et al. v. The United States (1988)***

In 1988 Mae Tso’s grandmother, Jenny Manybeads, was a scant-toothed matriarch, with long-white hair, approaching 100-years old. Her photograph graces the cover of Emily Benedek’s book *The Wind Won’t Know Me: A History of the Navajo-Hopi Land Dispute*. In 1988 Jenny Manybeads, and 46 other Navajos living on HPL, sued the United States alleging that P.L. 93-531 and forced relocation violated their First Amendment right to

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<sup>8</sup> Supreme Court Chief Justice John Marshall wrote these words in *Cherokee Nation v. Georgia* in 1831. He described Indian tribes as “domestic dependent nations,” which means that treaties transferred the Indian title to the land to the U.S. government. Cheyfitz has written that Indian treaties did not, as many believe, convey Indian sovereignty and legal title to their lands, but “so that Indian tribal sovereignty and title could ‘legally’ come under the ‘plenary power’ [absolute power] of Congress” (2003, p. 620).

religion freedom. “This is because in traditional Navajo practice, as is generally true for Native Americans, land and religion are inseparably linked” (Cheyfitz, 2003, p. 238).

The suit was dismissed in 1991. The presiding federal court judge, Earl Carroll, rejected all claims, writing in effect “that government property rights trumped Indian religious rights” (Cheyfitz, 2003, p. 238). However, Judge Carroll also ordered the Hopi tribal council and the plaintiffs to sit down and work out an agreement that respected both Navajo and Hopi religious beliefs. After four years of mediation, the Hopi tribal council agreed to an Accommodations Agreement, allowing the resisters to remain on the land if they signed 75-year leases.<sup>9</sup> The government also agreed to give the Hopis a monetary settlement. But Manybeads and the other plaintiffs protested that the Accommodations Agreement wasn’t enough—they wanted repeal of P.L. 93-531 and appealed to the U.S. 9<sup>th</sup> Circuit Court of Appeals.

Roberta Blackgoat’s response to the Accommodations Agreement was as follows:

The Creator put me here, where my grandparents and their grandparents and great grandparents are buried, to live in happiness until I reach old age, *Sa’ah Naaghaii Bik’eh Hozho*. I’ll never sign a piece of paper that says I can’t use what the Creator has already given me. It’s unnatural. (Luckmann, 1996, p. 36)

According to Benedek, however, 86% of the resisters signed 75-year leases in order to stay on the land (1999, p. 405).

In 2000, in response to the *Manybead et al.* appeal, the 9<sup>th</sup> Court of Appeals dismissed the case for the following reasons:

A Settlement Agreement [1974] was reached between the Hopi Tribe and the United States and an Accommodation Agreement [1995] agreed to by the Hopi Tribe, the Navajo Nation, and representatives of individual Navajos. By this agreement, provision was made for plaintiffs here and other Navajo families residing on Hopi land to obtain at no cost 75 year leases on homesites and farmlands within land awarded by court decree to the Hopi.

The practical effect, however, of what she [Manybeads] seeks in having the 1974 statute [P.L. 93-531] invalidated would be the undoing of the Agreements to the substantial prejudice to the Hopi Tribe. (*Manybeads et al. v. United States*, 209 F. 3d, 1164 (9<sup>th</sup> Cir. 2000))

Navajo families continue to live on HPL and challenge and resist P.L. 93-531. According to Malcolm D. Benally, editor and translator of *Bitter Water: Dine Oral Histories of the Navajo-Hopi Land Dispute*, “To accommodate demands for human rights, the law took on new names and titles of collusion like the Navajo-Hopi Land Settlement Act, the

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<sup>9</sup> The result was Public Law 104-301, the Navajo-Hopi land Settlement Act of 1996, an Accommodation Agreement, which spelled out how 2,000 – 3,000 Navajos could continue to reside on Hopi Partitioned Land if they signed 75-year leases.

Accommodation Agreement, and the ‘seventy-five-year lease.’ In the end, it is still the relocation law” (2011. p. 2).

Mae Tso had this to say regarding the Accommodation Agreement and *Manybeads et al. v. the United States*, respectively:

We’re told to lease the land for seventy-five years, with only three acres of land left for our children to live on. “No matter how many children you have, you must make room.” We are told this, we must resist.

*Manybeads et al. v. the United States* is a lawsuit. But, people don’t understand it. We explain our beliefs as a natural law, an order of ceremony; as the laws we walk with, live with, and breathe in. It is inside of us. A Blessing Way ceremony is done for a renewal of your self. You breathe again. You can be strong. The blood stream is strong and after a ceremony you can go again. This is the way of life we’re pleading for today. . . . They will never address these issues about our beliefs. Instead they give us a seventy-five-year lease to relocate: “Let them stay awhile longer.” (Tso, 2011, pp. 18, 21)

### **Civil rights v. sovereign rights**

The Civil Rights of all Americans are enumerated in the Bill of Rights (the first ten amendments to the Constitution). These rights include freedom of religion and protection against cruel and unusual punishment. If indigenous people and matriarchs like Mae Tso continue to resist P.L. 93-531 and the Accommodations Agreement (P.L. 104-301), they must believe that their civil and natural rights have been violated. The *United Nations Declaration of the Human Rights of Indigenous People* (2007) requires that indigenous peoples shall not be relocated from their lands without their “free, prior, and informed consent” (Article 10). In addition, the United Nations convened its Human Rights Subcommittee in Geneva, Switzerland, during August 1981, to review charges that the United States had violated the human rights of the Navajos living on HPL by their forced relocation (Redhouse, 1985). Moreover, on November 29, 2000, the European Parliament issued a resolution calling on the U.S. government to respect the rights of Navajos living on Hopi Partitioned Land in the Black Mesa region (*International Law Update Vol. 6*, December 2000).

*Jenny Manybeads et al. v. the United States* (2001) was dismissed “for want of a necessary and indispensable party, the Hopi Tribe,” which highlights, according to Felix Cohen, the most basic principle of all Indian law—tribal sovereignty—“the tribe’s ultimate authority to govern their reservations” (qtd in Wilkinson, 1996, p. 451). In the case of *Jenny Manybeads et al.* (2001), and by its decision upholding P.L. 93-531, tribal sovereignty trumps individual rights on Indian reservations. In its decision the Supreme Court wrote that “individual interests may be litigated in a suit between the two tribes only when those interests are represented by the tribal chairmen” (emphasis mine, p. 4).

Thus, by the Supreme Court’s decision, as *Jenny Manybeads et al.* (2001) brought to light, P.L. 93-531 undermined the civil rights of Navajos on HPL because they were not

represented by their tribal chairmen nor seen as sovereigns over the land they inhabited. In the eyes of federal-Indian law, they lacked sovereignty over the land they and their ancestors had cultivated and relied upon for generations, even preceding the 1882 Hopi Reservation. Because of this lack of sovereignty, the civil rights of the HPL Navajo could not be honored.

[...] the HPL Navajos find themselves caught between two tribal jurisdictions without representation on the councils of either tribe. While HPL Navajos have representation as individuals in the Chapters (Navajo Nation voting districts) that border their homes on the HPL, they have no representation on the Navajo Nation Council as a traditional *sovereign* community with a unique history and a set of needs arising from that history. In addition, they have no representation whatsoever on the Hopi tribal council, though they are subject to Hopi civil and criminal law [. . .]. Thus whether we talk in terms of Native or Western sovereignty, the HPL Navajos have been displaced by federal Indian law to a jurisdiction that is beyond the bounds of their sovereign rights. (Cheyfitz, 2003, p. 240)

### **Conclusion**

In April 2002, Roberta Blackgoat passed into the spirit world. By the author's estimate, she was 86. An obituary in the *Navajo Times* (April 25, 2002) wrote that "Blackgoat never gave up that the federal laws that Congress passed to relocate her and other Navajo people from their ancestral homes would be repealed" (qtd in Benally, 2011, p. 37).

Mae Tso and 300 families, approximately 1500 Navajos (author's estimate), continue to live on HPL, most of them having signed the Accommodations Agreement so they can remain where they feel they must to follow the way of life given to them by their ancestors and the Creator. This is the land they want to bequeath to their children and grandchildren for perpetuity, but this seems doubtful.

In *Healing v. Jones* (1962), U.S. Courts ruled that the Hopi and Navajo had equal rights to the 1882 Executive Order Reservation, not including District 6 surrounding the Hopi's three mesas. However, with John Boyden as their legal counsel, the Hopi tribal council pushed for a legal resolution to joint ownership of the land, which led to partition of the Joint Use Area and forced relocation. In the author's opinion, without the support of influential congressmen, especially Arizona Senator Barry Goldwater, the law never would have passed Congress. Moreover, would the law have passed Congress if the relocatees had been white?

Ultimately, the U.S. courts agreed with the Hopi tribal council that Hopi sovereignty superseded the rights of Navajos living on HPL because those Navajos lacked sovereignty. Based on the *United Nations Declaration of Human Rights of Indigenous People*, the human rights of the resisting Navajos had been violated. Unfortunately, the

*United Nations Declaration (2007)* and U.S. “endorsement”<sup>10</sup> of it came more than three decades after P.L. 93-531 (1974) and 14 years after the Accommodations Agreement (P.L. 104-301).

Was it really a Navajo-Hopi Land Dispute? Or is this title a misnomer to hide a deeper truth? The centuries of “imbricated ethnohistories”—trading with each other, intermarrying with each other, settling their differences collaboratively and consensually—was shredded by “Western-based oppositional property law” (Cheyfitz, 2002, footnote 80). The tragedy was that the colonial bureaucratic structure—supported by the federal government and lawyers representing both the tribal councils and mineral interests—overrode the “traditional Navajo and Hopi structures of mediation based on community consensus” (Cheyfitz, 2002, p.240).

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<sup>10</sup> On September 13, 2007, the United Nations General Assembly adopted the *Declaration of Human Rights of Indigenous People*. The U.S. was one of four countries voting against the *Declaration*; however, in 2010 the U.S. reversed its vote.



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**Appendix: Chronology of important events**

(Adapted from Benedek, 1999; and Kammer, 1980)

1848

Treaty of Guadalupe Hidalgo transferring the land from Mexico to the United States

1864

The Navajo Long Walk

1868

U.S. government and Navajo chiefs sign a treaty establishing initial reservation boundaries. Navajo return home from Fort Sumner following The Long Walk and four years of incarceration.

1882

President Chester A. Arthur issues an executive order setting aside 2.5 million acres around the three Hopi mesas, and much of the rest of Black Mesa, for Hopis and “such other Indians as the Secretary of the Interior may see fit to settle thereon.”

1880s

Hopi factionalism erupts into “progressives” (friendly to the U.S. government) and “traditionalists” (hostile to the U.S. government).

1934

U.S. Congress passes Wheeler-Howard Bill, the Indian Re-Organization Act (IRA). Hopi “vote” to accept the terms of IRA, leading to an elected tribal council. Overwhelming majority of Hopis refuse to vote.

U.S. government recognized that many Navajos were living outside the boundaries of the 1868 Navajo Reservation and extended its boundaries by executive order to completely surround the 1882 Hopi Reservation.

1936

Federal government divides 1882 Reservation into 18 Grazing Districts. District 6 is set aside for exclusive Hopi use, 650,013 acres, which includes territory around Hopi villages on their three mesas at the southern end of Black Mesa, resulting in the first relocation of Navajos. Seventeen other grazing districts are for joint Hopi and Navajo use.

1940s

Large coal deposits re-discovered on Black Mesa, in the 1882 Reservation, including Big Mountain area.

1943

District 6 is expanded, further relocating additional Navajos, some families for the second time.

1958

Public Law 85-547 authorizes Navajo and Hopi Tribes to sue each other to settle boundary questions resulting from 1882 Reservation. The Hopi's file suit, which becomes *Healing v. Jones*.

1962

In *Healing v. Jones*, a panel of three federal judges rules that 1.8 million acres of the original 2.5 million acre 1882 Reservation to be owned jointly, "joint, undivided and equal rights and interests," by both the Hopi and Navajo tribes. This becomes known as the Joint Use Area (JUA).

1966

Peabody coal signed coal leases with the Hopi and Navajo. The coal leases were significantly under market value.

1972

District court of Arizona orders Navajo livestock reduction and bars Navajo construction in Hopi side of JUA.

1974

Congress passed the Navajo-Hopi Indian Land Settlement Act (P.L. 93-531), "to provide for final settlement," providing for equal partition of the JUA and the relocation of members of one tribe living on and partitioned to the other.

Navajo Tribe begins rental payments to Hopi Tribe for Navajos living on HPL.

1977

U.S. District Court of Arizona partitions the former Joint Use Area into the Navajo Partition Lands (NPL) and the Hopi Partition Lands (HPL).

1986

Relocation from the Joint Use Area is to be completed. By 1986 approximately 100 Hopi and 12,000 Navajo are relocated outside the reservations.

1988

Lee Phillips files suit in Federal District court on behalf of Navajos living on Hopi Partition Lands. *Jenny Manybeads, et al. V. United States of America*. The suit alleges that P.L. 93-531 violates the religious freedom of the Navajo plaintiffs by severing them from their land.

1991

In reviewing *Jenny Manybeads, et al. V. United States of America*, a federal court ordered the government and the Hopi tribal council to sit down with the resisting Navajos to find an alternative to forced relocation that respected the Navajo (and Hopi) religious beliefs. "The panel believes . . . best interests served if case settled."

1995 / 1996

An Accommodation Agreement signed in December 1995 allowed Navajos living on HPL to stay if they sign 75-year leases. In 1996 the Agreement was approved by Congress and signed into law by President Clinton. The Hopis would have the right to remove any Navajos from HPL if they didn't sign the lease by February 2000.

2001

The Supreme Court dismisses the *Jenny Manybeads, et al. V. United States of America* appeal on grounds that the Hopi and Navajo nations were not parties to the suit.

2011

Approximately 1,500 - 2,000 Navajos, including 250 families, continue to live on HPL.

Source: Roessel, 1983, p. 520

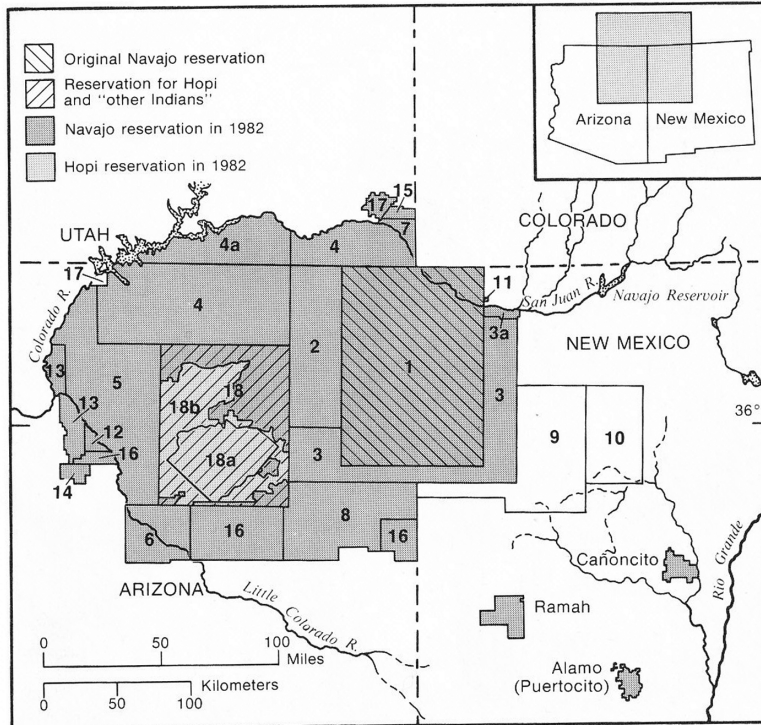


Fig. 16. Navajo lands, 1868–1977. Original treaty reservation with executive order additions and withdrawals: 1, reservation, June 1, 1868; 2, addition Oct. 29, 1878; 3, addition Jan. 6, 1880; 3a, originally part of 3, withdrawn from reservation May 17, 1884, restored to reservation April 24, 1886; 4, additions May 17, 1884; 4a, “Paiute Strip,” originally a part of 4, restored to public domain 1892, withdrawn for use of various Indians 1908, restored to public domain 1922, withdrawn again in 1929, permanently transferred to Navajo reservation March 1, 1933; 5, addition Jan. 8, 1900; 6, addition Nov. 14, 1901; 7, addition May 15, 1905; 8, addition Nov. 9, 1907; 9, addition Nov. 9, 1907, restored to public domain Jan. 16, 1911; 10, addition Nov. 9, 1907, restored to public domain Dec. 30, 1908; 11, addition Dec. 1, 1913; 12, addition May 7, 1917, and Jan. 19, 1918. Additions to the Navajo reservation by acts of Congress: 13, act of May 23, 1930; 14, act of Feb. 21, 1931; 15, act of March 1, 1933; 16, act of June 14, 1934; 17, act of Sept. 2, 1958 authorizing exchange of lands at Glen Canyon Dam and Page, Ariz., for lands in Utah (see also Correll and Dehiya 1972). Hopi reservation lands: 18, original executive order reservation created “for the use and occupancy of the Moqui, and such other Indians as the Secretary of the Interior may see fit to settle thereon,” Dec. 16, 1882; 18a, Hopi reservation outlined in a decision by the U.S. District Court for the District of Arizona Sept. 28, 1962, with remaining part of 18 designated Hopi-Navajo Joint Use Area; 18b, Hopi reservation outlined along “Mediator’s Line” according to an Order of Partition issued by the U.S. District Court for the District of Arizona Feb. 10, 1977. Remaining area within 18 was ordered to become Navajo land.